A NEW NATION.

"EVERYTHING gravitates to Washington: the highest interests and the most absorbing ambitions look to the National capital for gratification; and it is no longer the State, but the Nation, that in men's minds and imaginations is an ever present sovereignty. . . . We may preserve the Constitution in its every phrase and every letter with only such modification as was found essential for the uprooting of slavery; but the Union as it was has given way to a new Union, with some new and grand features, but also with some engrafted evils which only time and the patient and persevering labors of statesmen and patriots will suffice to eradicate." [1]

"There has grown up a pride in the National Flag and in the National Government as representing National Unity. . . . As the modes in and by which these and other similar causes can work are evidently not exhausted, it is clear that the development of the Constitution as between the Nation and the States, has not yet stopped, and present appearances suggest that the centralizing tendency will continue to prevail." [2]

The above cited statements were written and published nearly ten years ago, but the centralizing tendencies therein noted have not ceased, and it would be easy to-day to glean from recent publications, including the daily newspaper, citations of a similar purport sufficient of themselves to make a magazine article.

The purpose, however, of the present inquiry is not so much to note the changes in public sentiment which have been going on, as it is to consider from a legal standpoint what changes have of recent years, as a matter of fact, taken place in the framework of the National Government.

It is a matter of history, and is well understood, that after the close of the late Civil War there was a reconstruction (more or less under National supervision) of the State Governments in those States which had sought to terminate the Union.

This fact is so widely known, and was so prominent a feature

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[1] Cooley, History of Michigan, p. 371 (1885).

[2] Bryce, The American Commonwealth, Vol. I. p. 394.

of the history of those times, that the period is frequently spoken of as the Reconstruction Period.

But it is not, I venture to say, even now, after a lapse of over twenty-five years, fully realized that there was during the same period a Reconstruction also of the National Government.

By Reconstruction I mean a radical departure from the original theory which the founders of the government had clearly in mind when in 1787 they framed the Constitution and in 1789 added the first ten Amendments thereto.

When in 1865, 1866, and 1869 the Thirteenth, Fourteenth, and Fifteenth Amendments were proposed by Congress, and submitted to the people, it was commonly understood that their purpose was to finally do away with slavery, and secure to the negro his personal and political rights. Speaking of these three Amendments, Mr. Bryce says (Vol. I. p. 357): "These three amendments are the outcome of the War of Secession, and were needed in order to confirm and secure for the future its results."

In the so called Slaughter-House Cases in the Supreme Court of the United States, reported in 16 Wall. 36 (1873), Mr. Justice Miller, in delivering the opinion of the court (p. 71), says: —

"We repeat, then, in the light of this recapitulation of events almost too recent to be called history, but which are familiar to us all, — and on the most casual examination of the language of these amendments no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested, — we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him."

Again (at page 81): —

"We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class or on account of their race will ever be held to come within the purview of this provision. [The provision referred to is, 'Nor shall any State deny to any person within its jurisdiction the equal protection of the laws.'] It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other."

But even as early as 1873, there were those who saw in these Amendments a broader meaning and a wider application. Four

members of the Supreme Court — viz. Chief Justice Chase, Mr. Justice Field, Mr. Justice Swayne, and Mr. Justice Bradley — dissented from the decision of the majority of the court, and three of them wrote dissenting opinions taking a very different view of the scope and effect of the said Amendments. The majority of the court consisted of Justices Clifford, Miller, Davis, Strong, and Hunt. Mr. Justice Field in his dissenting opinion, which was concurred in by the other dissenting judges, says (pp. 89, 93, 95): —

"The question presented is therefore one of the gravest importance, not merely to the parties here, but to the whole country. It is nothing less than the question whether the recent Amendments to the Federal Constitution protect the citizens of the United States against the deprivation of their common rights by State legislation. In my judgment the Fourteenth Amendment does afford such protection, and was so intended by the Congress which framed and the States which adopted it. . . . The Amendment [XIV.] was adopted to obviate objections which had been raised and pressed with great force to the validity of the Civil Rights Act, and to place the common rights of American citizens under the protection of the National Government. It first declares that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.' It then declares that 'no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' . . . A citizen of a State is now only a citizen of the United States residing in that State. The fundamental rights, privileges, and immunities which belong to him as a free man and a free citizen now belong to him as a citizen of the United States, and are not dependent upon his citizenship of any State. . . . The Amendment does not attempt to confer any new privileges or immunities upon citizens, or to enumerate or define those already existing. It assumes that there are such privileges and immunities which belong of right to citizens as such, and ordains that they shall not be abridged by State legislation."

Mr. Justice Bradley in his dissenting opinion in the same case (p. 121) says: —

"Can the Federal Courts administer relief to citizens of the United States whose privileges and immunities have been abridged by a State? Of this I entertain no doubt. Prior to the Fourteenth Amendment this could not be done, except in a few instances, for the want of the requi-

site authority. . . . Admitting, therefore, that formerly the States were not prohibited from infringing any of the fundamental privileges and immunities of citizens of the United States except in a few specified cases, that cannot be said now since the adoption of the Fourteenth Amendment. In my judgment it was the intention of the people in adopting that Amendment to provide National security against violation by the States of the fundamental rights of the citizen."

We shall show later that since 1873, while the decisions of the court have tended on the whole to give a narrow meaning to the words "privileges and immunities" as used in the Fourteenth Amendment, the intimation of Mr. Justice Miller that the Amendment ought to be construed as applying only to the colored race has not been heeded, and all these Amendments are now held to apply to all citizens without regard to their race or color.

What then was the change worked by these Amendments in the theory of our National Government?

Before we can answer this, it is necessary to state as briefly as we may what was the theory of the Constitution of 1787–89 as regards the personal rights, privileges, and immunities of the individual citizens, and the manner in which they should have security and protection in the enjoyment of the same.

Prior to the Declaration of Independence, July 4, 1776, owing to the distance of the several Colonies from the mother country and the existing character of the English government, the Colonists for the most part looked solely to their several Colonial governments for the protection of their individual rights. The government of George the Third they deemed an oppressive one. Their experience with him and his Parliaments rendered the Colonists distrustful of all external government, and made them prefer the local government, which was largely of their own making, and more familiar and more within their own control.

"Each [Colony] had its legislature, its own statutes adding to or modifying the English common law, its local corporate life and traditions, with no small local pride in its own history and institutions, superadded to the pride of forming part of the English race and the great free British realm. Between the various Colonies there was no other political connection than that which arose from their all belonging to this race and realm, so that the inhabitants of each enjoyed in every one of the others the rights and privileges of British subjects." [1]

[1] Bryce, The American Commonwealth, Vol. I. p. 16.

As Englishmen they were entitled to such rights as were guaranteed by the Magna Charta, the Petition of Right, the Habeas Corpus Act, and the Bill of Rights. The Charters of many of the Colonies contained provisions intended to secure the rights of the individual; e. g. the Charter of the Colony of Massachusetts Bay granted by Charles I. in 1628, and also the Charter of the Province of the Massachusetts Bay (which included Massachusetts, New Hampshire, and Maine) granted by William and Mary in 1691, each provided: —

"All . . . of the subjects of us . . . which shall go to and inhabit within our said Province, . . . and every of their children which shall happen to be born there, . . . shall have and enjoy all *liberties* and *immunities* of free and natural subjects within any of the dominions of us . . . to all intents . . . as if they . . . were born within this our realm of England." [1]

It was the infringement of their rights, liberties, and immunities by the British Parliament which they made the ground for declaring their independence.

At the first gathering of the Continental Congress, consisting of deputies from the several Colonies in 1774, on October 10th, a Declaration of Rights was adopted in which it was set out: —

"That the inhabitants of the English Colonies in North America by the immutable laws of nature, the principles of the English Constitution, and the several Charters or Compacts have the following rights:

"1. That they are entitled to *life*, *liberty*, and *property*. . . .

"2. That our ancestors were at the time of their emigration from the mother country entitled to all the *rights*, *liberties*, and *immunities* of free and natural born subjects within the realm of England.

"3. That by such emigration they neither forfeited, surrendered, nor lost any of those rights."

An enumeration of some of these rights and immunities is then set forth, and a statement made of various Acts of Parliament which violate these rights and ought to be repealed.

At the same session, on October 20th, 1774, the Continental Congress, "to obtain redress of these grievances which threaten destruction to the *lives*, *liberty*, and *property* of his Majesty's subjects in North America," prepared, and its members signed on behalf of themselves and their constituents, what is known as the Non-Importation Agreement, binding all the Colonies (not includ-

[1] Ancient Charters, pp. 13, 31.

ing Georgia which was not represented) to act together in certain specified ways.

Immediately following the Declaration of Independence, in 1776, came the work in each of the Colonies of setting up independent State governments with written Constitutions more or less elaborate. This was in each instance the work of each new State acting by itself. There was some copying by one from another of provisions in the several Constitutions, but there was apparently no interference of one State with another in this work, and apparently no attempt to secure harmonious results.

It was indeed a reconstruction period, but there was no Federal or National Government to aid or hinder the independent action of each of the new Thirteen States. Each State made secure in its own way the life, liberty, and property, and the privileges and immunities, of its own citizens.

In Rhode Island and Connecticut the Colonial Charters were made to serve as State Constitutions.

It is interesting to note that in none of the new States except Connecticut was there any constitutional provision made defining or securing the rights of non-residents, that is, of citizens of the other States when within the State. In a few of the new States — e. g. Pennsylvania and North Carolina — it was provided that *foreigners* might, after taking an oath of allegiance, acquire real estate, and after a year's residence be deemed free citizens.

In Connecticut, in an act passed in 1776 establishing the frame of the new government, it was declared: —

"That all the free inhabitants of this or any other of the United States of America and foreigners in amity with this State shall enjoy the same justice and law within this State which is general for the State in all cases proper for the cognizance of the civil authority and Court of Judicature within the same, and that without partiality or delay."[1]

One reason for such omission may possibly be the fact that the Articles of Confederation, which were framed July 9, 1778, though not finally ratified till 1781, were in process of making, and were known to the people after 1776 as their expected Constitution.[2] In Article IV. of the Articles of Confederation it was provided: —

[1] Thayer's Cases on Constitutional Law, Vol. I. p. 433.

[2] Fiske, The Critical Period of American History, p. 97.

"The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union the free inhabitants of each of these States . . . shall be entitled to all *privileges* and *immunities* of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the *privileges* of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively."[1]

There is one further fact which should be noted in regard to the several State Constitutions, — all of which were framed and in force prior to 1781, — namely, that in many of them, notably those of Pennsylvania, Delaware, Maryland, and North Carolina, there was a provision declaring that the people of the State ought to have the sole right of regulating the internal government and police thereof.

From 1781 until 1787, when our present Constitution was framed, the evils which existed were many and serious; so much so that the country was drifting toward, if not on the verge of anarchy.[2]

Among these evils was the inability of the Congress to raise money to pay its debts or meet its expenses. Another was its powerlessness to provide the country with sound money, and still another its inability to secure from the States the performance of the several Treaties which had been made with England and European powers. The currency of the country was entirely disorganized. Still other evils were caused by the jealousies existing among the several States, leading to commercial quarrels and almost to actual warfare between different States. But the effect of all this was to increase rather than diminish the feeling of State independence. The character of the Federal Government, moreover, thus far had not been such as to invite any one to rely upon it for protection of any class of rights whatsoever.

Congress having under the Articles of Confederation no power to act directly upon the people, but only upon the States, had practically no power at all, and after the close of the war became more and more incapable of performing any valuable service to the country.

Such then, in brief, was the condition of things when the fifty-

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[1] Bryce, The American Commonwealth, Vol. I. p. 662.

[2] See Fiske, Critical Period of American History, Chapter IV.

five delegates assembled, in the summer of 1787, to revise the Articles of Confederation. But it was already apparent to the leading delegates that something besides patching was necessary, and the Convention speedily set about the work of preparing a new framework for a new National Government.

Even a cursory study of the debates in the Convention shows with what reluctance the power of acting in any way directly upon the individual citizens was granted to the Federal Government.

There was an ever present fear that the Federal Government — even its friends hesitated to call it National — would swallow up, or at least overshadow the States, and extinguish local independence. The feeling of many — I may say of very many — of the delegates was the same as that of one of our present historians: —

> "If the day should ever arrive (which God forbid !) when the people of the different parts of our country shall allow their local affairs to be administered by prefects sent from Washington, and when the self-government of the States shall have been so far lost as that of the Departments of France, or even so far as that of the Counties of England, — on that day the progressive political career of the American people will have come to an end, and the hopes that have been built upon it for the future happiness and prosperity of mankind will be wrecked forever."[1]

The work of the Convention was in a considerable degree a matter of compromise, or rather of a series of compromises.

The power to regulate foreign and interstate commerce was secured for the National Government only by conceding to the Slave States a continuance of the slave trade for twenty years.[2]

Hamilton's suggestion that the National Government be given powers practically unlimited was received with extreme disapproval. The New Jersey plan, providing for a Confederacy, left the States with no essential curtailment of their sovereign power. The Virginia Plan, while providing for a Union under a National Government, sought to clothe such government with power only in matters relating to the national peace and harmony.[3]

The Scheme of Government which was finally framed and adopted was briefly as follows: —

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[1] John Fiske, The Critical Period of American History, p. 238.

[2] Curtis, Constitutional History of the United States (1889), Vol. I. p. 305.

[3] See Report of the Committee of the Whole, reported to the Convention, June 13, 1787, given in Curtis, Constitutional Hist. of U. S., Vol. I. pp. 365, 366.

I. The National Government alone was charged with the duty and with the power of regulating what may be called matters of national concern. The chief of these were treaties and the foreign relations of the country, the army and navy, foreign and interstate commerce, the currency, and the post office. To insure the performance of these duties, power to raise money was granted, and three departments of the National Government were provided for, viz. the Legislative, the Executive, and the Judicial.

II. The States were left with all the other ordinary powers of internal government, such as legislation on private law, civil and criminal, the maintenance of law and order, the creation of local institutions, education, and the relief of the poor.

III. In a few matters a concurrent power was given to the National Government and the States; e. g. in controversies between citizens of different States, the parties, if so minded, could have their rights determined in the State Courts, or, at the option of any party who might fear unfair discrimination, cases could be taken into the Courts of the United States.

IV. Certain prohibitions were provided applicable to both the National and the State Governments; e. g. that no tax should be laid on exports from any State.

V. Certain prohibitions were imposed on the National Government alone. These were contained in Article I. § 9, and in the first ten Amendments. Among these were provisions intended to secure the life, liberty, and property of individuals from being unjustly assailed by the National Government.

VI. Certain prohibitions were imposed on the States alone. These were contained in Article I. § 10. They were of two kinds: *First*, provisions intended to keep the States from attempting to exercise any of the powers intrusted solely to the National Government. *Second*, the following provisions intended to protect individuals against oppressive State legislation, viz.: "No State shall . . . pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts."

VII. Provision was made for securing the rights of non-residents, that is, of citizens of one State when in another State.

The language used on this point was largely taken from Article IV. of the Articles of Confederation.[1]

The first paragraph of § 2 is as follows: "The citizen of each

[1] See Article IV. of Constitution, §§ 1 and 2.

State shall be entitled to all *privileges* and *immunities* of citizens in the several States."

The important thing to be noticed in all the foregoing summary is that — except in the three specified cases of bills of attainder, *ex post facto* criminal laws, and laws impairing the obligation of contracts — no attempt was made to protect the individual citizens from oppressive treatment by their own States. The States could oppress their own citizens without limit in all matters of domestic concern. They could abolish trial by jury in criminal or civil cases. They could suppress freedom of speaking and establish a censorship of the press. It was not a part of the scheme of government embodied in the Constitution that the National Government should be authorized to interfere between any State and its own citizens.

"To have authorized such intervention would have been to run counter to the whole spirit of the Constitution, which kept steadily in view, as the wisest policy, local government for local affairs, general government for general affairs only."[1]

As there was no language in the Constitution which could afford any ground for supposing that the United States Supreme Court had any power of protecting a citizen in his rights, privileges, and immunities as against his own State and its tribunals, it is not surprising that few cases are to be found in which protection for such rights has been sought in this quarter.[2] This cannot be attributed to any unwillingness of the citizens to look to the National Power for such help as it could afford. The one clause in the Constitution extending the Federal protection to individual civil rights, — I refer to Article I. § 10, paragraph 1, "No State shall . . . pass any . . . law impairing the obligation of contracts," — has given the United States Supreme Court more work to do and more cases to deal with than any other clause in the entire Constitution.[3]

Having shown as far as we may in the space allowed what the frame of the National Government was prior to the adoption of

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[1] Judge Cooley, cited in Bryce, The American Commonwealth, Vol. I. p. 331. See HARVARD LAW REVIEW, Vol. I. pp. 322–326, Article by Wm. H. Dunbar, entitled "The Anarchists' Case."

[2] See Scott *v.* Sanford, 19 Howard, 395, 452 (1856).

[3] See Baker, Annotated Constitution of the United States (1891), pp. 68–101, for a partial list of such cases.

the Thirteenth, Fourteenth, and Fifteenth Amendments, we come now in conclusion to a consideration of the magnitude and extent of the changes effected by those Amendments. "The revolution worked by these Amendments is a momentous one, and must be judged by consequences which time alone can disclose."[1]

It is to be noticed in the first place that the language of the Fourteenth Amendment is sufficiently broad and comprehensive to embrace all the rights of the individual citizens, and place them under the shelter and protection of the National power. The words "privileges and immunities," and "life, liberty, and property," had been long in use when the Fourteenth Amendment was framed. The words "liberties and immunities," as we have seen, were used in the Charter of the Province of Massachusetts Bay. The same words, and the words "life, liberty, and property," were used in the Declaration of Rights adopted by the Continental Congress, October 10, 1774.[2] The words "life, liberty, or property" were used in the Fifth Amendment, framed in 1789, and the words "privileges and immunities" were used in the Constitution itself, Article IV. § 2. The words "privileges and immunities" were defined by Mr. Justice Washington, sitting in the Circuit Court of the United States for Pennsylvania in 1825, in the case of Corfield *v.* Coryell, 4 Wash. C. C. 371. He says: —

"The inquiry is, what are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature fundamental, which belong of right to the citizens of all free governments; and which have at all times been enjoyed by the citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may however be all comprehended under the following general heads: protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one State to pass through or to reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and main-

[1] Hare's American Constitutional Law, Vol. II. p. 748 (1889).

[2] All these words were used in many of the State Constitutions. See Cooley's Constitutional Limitations, 6th ed. (1890), pp. 429, 430.

tain actions of any kind in the Courts of the State; to take, hold, and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State, — may be mentioned as some of the particular *privileges* and *immunities* of citizens which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added, the elective franchise as regulated and established by the laws or Constitution of the State in which it is to be exercised. These and many others which might be mentioned are strictly speaking *privileges* and *immunities*, and the enjoyment of them by the citizens of each State in every other State was manifestly calculated (to use the expressions of the preamble of the corresponding provision in the old Articles of Confederation) the better to secure and perpetuate mutual friendship and intercourse among the people of the different States of the Union."

The words "privileges and immunities," and "life, liberty, and property," come down to us from the time of Magna Charta. For a discussion of the meaning of the word "liberty," see an article entitled "Meaning of the Term 'Liberty' in Federal and State Constitutions," by Charles E. Shattuck, 4 HARVARD LAW REVIEW, 365.

It is sufficient for the present purpose to say that the words used in the Fourteenth Amendment, whether considered historically or simply with reference to their popular signification, are broad enough to allow the United States Supreme Court (when so disposed) to give protection to all the fundamental rights of the citizens of the several States.

It will not be possible to consider all the cases which have arisen under these Amendments. A large number of them are to be found in Thayer's Cases on Constitutional Law, Part II.

It is noticeable that the Supreme Court of the United States at an early day recognized the fact, that unless the broad language of these Amendments, and especially that of the Fourteenth Amendment, could in some way be shorn of its full significance, the fundamental groundwork of the National Government must be considered at once as essentially altered.[1]

This appears in the language of the court (Mr. Justice Miller delivering the opinion) in the Slaughter-House Cases, 16 Wall. 36, above cited: —

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[1] See HARVARD LAW REVIEW, Vol. II. p. 363, Article by E. Irving Smith, entitled "Legal Aspect of the Southern Question."

"In the early history of the organization of the government, its statesmen seem to have divided on the line which should separate the powers of the National Government from those of the State governments, and though this line has never been very well defined in public opinion such a division has continued from that day to this.

"The adoption of the first eleven Amendments to the Constitution so soon after the original instrument was accepted shows a prevailing sense of danger at that time from the Federal power. And it cannot be denied that such a jealousy continued to exist with many patriotic men until the breaking out of the late Civil War. It was then discovered that the true danger to the perpetuity of the Union was in the capacity of the State organizations to combine and concentrate all the powers of the State and contiguous States for a determined resistance to the General Government.

"Unquestionably this has given great force to the argument, and added largely to the number of those who believe in the necessity of a strong National Government.

"But however pervading this sentiment, and however it may have contributed to the adoption of the Amendments we have been considering, we do not see in those Amendments *any purpose to destroy the main features or the general system.* Under the pressure of all the excited feeling growing out of the war, our statesmen have still believed that the existence of the States with powers for domestic and local government, including the regulation of civil rights — the rights of person and of property — was essential to the perfect working of our complex form of government, though they have thought proper to impose additional limitations on the States, and to confer additional power on that of the nation."

Thus grudgingly did the majority of the court in 1873 recognize a possible extension of the National powers.

In order to minimize this extension, a majority of the court in this case construed the words "privileges and immunities" in the Fourteenth Amendment to include only such privileges and immunities as pertain to the citizens in their relations to the National Government; e. g. such as the right of free access to the seaports and to the seat of government, the United States Courts, and the sub-treasuries, etc., as distinguished from the whole body of privileges and immunities which pertain to citizens in their domestic or every-day relations.

But this view did not escape severe criticism. In the case of Butchers' Union Co. *v.* Crescent City Co.,[1] decided ten years after

[1] 111 U. S. 746.

the Slaughter-House Cases, Mr. Justice Field, in delivering a concurring opinion, took occasion to say: —

"The first section of the Amendment is stripped of all its protective force if its application be limited to the privileges and immunities of citizens of the United States as distinguished from citizens of the States, and thus its prohibition be extended only to the abridgment or impairment of such rights as the right to come to the seat of government, . . . which are specified in the opinion in the Slaughter-House cases as the special rights of such citizens."

Mr. Justice Bradley in the same case says: —

"I hold that the liberty of pursuit — the right to follow any of the ordinary callings of life — is one of the privileges of a citizen of the United States."

Again the majority of the Supreme Court of the United States have sought to belittle the effect of the Fourteenth Amendment by magnifying the Police Powers so called of the States, and placing the same in a considerable degree above the Constitutional provisions contained in that Amendment. We have a striking instance of this in Powell *v.* Pennsylvania,[1] one of the Oleomargarine Cases. But even in this case the Court recognized a limit to the power of the State. Mr. Justice Harlan says: —

"Nevertheless, if the incompatibility of the Constitution and the statute is clear or palpable, the courts must give effect to the former. And such would be the duty of the court if the State legislature, under the pretence of guarding the public health, the public morals, or the public safety, should invade the rights of life, liberty, or property, or other rights secured by the supreme law of the land."

The language of Professor Thayer on this point is very pertinent: "As regards the Fourteenth Amendment it had for its main purpose that of cutting down the local legislative power of the States, their 'police power,' and conferring on the General Government the right to restrain them in exercising it."[2]

Slow as the United States Supreme Court has been to interfere in behalf of the citizens of the States when oppressed by State legislation, the power to interfere must be now considered as well established. See Chicago, &c. Railway Co. *v.* Minnesota,[3] where

[1] 127 U. S. 678 (1887).

[2] Thayer's Cases on Constitutional Law, Part II. p. 742, note.

[3] 134 U. S. 418.

a State statute which deprived the plaintiff of its property without due process of law was held unconstitutional as being in conflict with the Fourteenth Amendment.[1]

There is one point worth noticing in most of the cases which have come before the United States Supreme Court under these Amendments to the Constitution, and that is that from the very outset until the present time the decisions have been very often by a majority of the court only, and there has constantly been a considerable number of the Justices in favor of giving to these Amendments more of the effect which they seem properly entitled to have. With a further increase throughout the country of what we may call the National sentiment, and a few more changes in the membership of the court, we may at no very distant day expect to see the National Government with a strong arm protecting all the people from oppression by the States.[2]

Hollis R. Bailey.[3]

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[1] Constitutional History as seen in American Law, pp. 231–233 (1889). Lecture of Charles A. Kent.

[2] See Strauder *v.* West Virginia, 100 U. S. 303 (1879); Yick Wo *v.* Hopkins, 118 U. S. 356 (1886); In re Lee Sing et al., 43 Fed. Rep. 359 (1890); Scott *v.* McNeal, 154 U. S. 34 (1894); Portland *v.* Bangor, 65 Me. 126 (1876); The State ex rel. Garrabad *v.* Dering, 84 Wisc. 585 (1893); in all which State laws were held unconstitutional as being in violation of the Fourteenth Amendment. See also The State *v.* Loomis, 115 Mo. 307 (1893); Leep *v.* Railway Co., 58 Ark. 408 (1894); Bradley *v.* Fallbrook Irrigation Dist., 68 Fed. Rep. 948 (1895); In re Minor, 69 Fed. Rep. 233 (1895); People *v.* Warren, 34 N. Y. S. 942 (1895); In re Quarles and Butler, 158 U. S. 532 (1895).

[3] Since the manuscript of the foregoing article was sent to the Editors, the writer has read with interest the article of William H. Dunbar, Esq., published in the Quarterly Journal of Economics, Vol. IX. No. 3, (April, 1895,) dealing with the same subject, and entitled "State Regulation of Prices and Wages."